Supreme Court, U.S.
FILED

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No.

In the Supreme Court of the United States

Edward H. Flint

Petitioner

v.

James Shake, Judge-et al

Respondent

On Petition for a Writ of Certiorari to the Court of Appeals for the Sixth Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1- Can Judges be granted absolute judicial immunity after violating Kentucky Supreme Court Rules of Practice and Procedures to illegally gain control of a case for political campaign contributions and to injury a party?

2- Was Petitioner denied Due Process by Respondents judges who violated Kentucky Supreme Court Rules?

3- Does a judge have jurisdiction of a case that was illegally obtained by violating Supreme Court's rules?

4- If a judge violates Supreme Court Rules, are they entitled to absolute judicial immunity?

5- If a judge violates a law of a state are they entitled to absolute judicial immunity?

6- Is Stump v. Sparkman 435 U.S 349,57 (1978) constitutional regarding immunity for judges?

In the Supreme Court of the United States

NO.

Edward H. Flint, **Petitioner,**

v.

JAMES SHAKE, Judge et, al **Respondent**

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

Edward H. Flint the Petitioner prays, that a Writ of Certiorari issue to review the judgment of the Sixth Circuit Court case No. 09-5577 entered in the above case on December 30, 2010

OPINION BELOW

The judgment of the Sixth Circuit entered on December 30, 2009

JURISDICTION

The jurisdiction of the Supreme Court is invoked under 28 USC 1254

Parties

Petitioner

Edward H. Flint,

Respondents

James Shake, Judge; Audra Eckerle, Judge; Ann O'Malley Shake, Judge; Jane Does; John Does

TABLE OF CONTENTS

TABLE OF CASES iii

TABLE OF AUTHORITIES ..... iv, v

APPENDIX ..... iv, v

STATUTE INVOLVED iv

STATEMENT OF THE CASE 1

ARGUMENT 6

REASON FOR GRANTING THE WRIT 11

CONCLUSION 12

APPENDIX

1- Sixth Circuit Case 09-5577 Order denying a A1
rehearing entered May 6, 2010

2- Sixth Circuit Case No. 09-5577 opinion..... A2
Affirming District Court, entered January 21, 2010

3- District Judges Memorandum opinion A5
order dated April 27, 2009

4- Kentucky Supreme Court order entered A8
July 11, 2006 approving the Rules of Practice and
Procedure for the Thirtieth Judicial Circuit, Jefferson
Circuit Court which contains Rule 11- Allocation of
Cases, Disqualification of Judges.

5- KRS 26A.015 Disqualification 0f Judges..... A9

6- Kentucky Supreme Court Rule SCR 4.300..... A14

TABLE OF AUTHORITIES

Stump v. Sparkman 435 U.S 349, 356,
57 (1978) 9, 10

The Kentucky Supreme Court Rules
of Practice and Procedures-Rule 11 3,11,

Kentucky Supreme Court Code of
Judicial Conduct SCR 4.300 9

Kentucky Statute- 26A.015, ... 4, 5, 8

STATEMENT OF THE CASE

Procedural history

This action arises out of a complaint filed out in Jefferson County Kentucky Circuit Court on October 2007 case No. 07-CI-10558. Petitioner was Pro, Se and was 76 years old. The case was about a flawed election for officers at a Condo Association where Petitioner lived. Petitioner believed based on evidence he had seen, the ballots had been substituted for and when the Board of Directors refuse to response to his letters asking that a meeting be called and the Petitioner filed a suit.

The case was assigned to Division 13 Judge Fred Cowan of the Jefferson County Circuit Court. The Petitioner after subpoenaing the President of the Association for a deposition received a letter form the Counsel for the Defendants stating his client would not appear for the deposition and the letter showed a copy was also sent to another attorney Mr. Brennan S. Cox who Petitioner had never heard of. Petitioner checked and found Mr. Cox was a law partner of Judge Cowan, who had the case in Circuit Court.

After Petitioner filed a motion to compel with the Division 13, Judge Cowan, the Judge said he wanted the case mediated. Petitioner asked Judge Cowan to recuse himself from the case and he did.

The case was assigned to Division 10 Judge Kathleen Voor Montano. After about four hearing in front of Judge Montano, on March 20, 2008 she recused herself, stating she discovered that Petitioner Flint knew her father-in-law about 15 years before.

The case was then assigned to Division 7 Judge Audra Eckerle. Counsel for the Defendants on April 8, 2008 filed for motion for summary judgment and the

court by order stopped Petitioner from taking any more discovery.

Judge Audra Eckerle on April 16, 2008 wrote a letter to Defendants Counsel Mr. Dennis Stilger stating she had received his motion for summary judgment and she reminded Mr. Stilger she must receive an AOC 280 Notice of Submission form before she could rule.
Mr. Stilger mailed the required AOC form to Judge Eckerle and Petitioner Edward Flint on April 25, 2008, which was a Friday.

On Monday April 28, 2008 Judge Eckerle marked the AOC 280 form as overruled regarding the motion. The form was signed by Judge Eckerle's Secretary R. Combs and the form showed it was mailed to AOC of April 28, 2008.

Mr. Stilger clocked in a new AOC 280 form at the clerks office on April 28, 2008.

This new form was marked issue decided granted on May 5, 2008 by Judge Ann Shake and shows mailed to AOC on May 7, 2008. Division 7 had been marked out and division 10 was put in place of seven.

An order signed by Judge Eckerle sending the case back to Division 10 appeared in the file. The order that Judge Eckerle signed stated **"In accordance with authorization set forth in the re-allotment order of the Chief Judge"**

Judge Montano the judge who had Petitioner's case till she disqualified herself on March 20, 2008, took ill and died on April 21, 2008.

Chief Judge Shake four days later on April 24, 2008 appointed his wife Judge Ann O'Malley Shake to set in for Judge Montana until the Governor appointed someone to take over Division ten.

Judge Ann Shake was not a full time judge but a retired judge only setting temporary.

Other relevant facts of the case

Kentucky Supreme Court issued a set of rules for the Thirtieth Judicial Circuit of Jefferson County Circuit Court which was last approved on July 11, 2006.

Rule 11 of the Supreme Court rules contain the following text regarding civil cases 1101-1102-1103-

Rule- 11 ALLOCATION OF CASE DIQUALIFICATION OF JUDGES

1101 Method of Allottment
All cases shall be allotted equally and at random among the thirteen (13) divisions of the court. However the Chief Judge may receive a twenty-five percent (25%) reduction in criminal and civil cases assigned.

A. Civil Cases. The automated case register in the Circuit Courts Clerk's Office assigns all District Court Appeals and all other civil cases to the various division of the Court. The register has been programmed by the AOC to ensure both the randomness of the assignments and equal distribution of cases.

1102 Refiled Cases.
A. Civil Cases. Whenever a case has been dismissed without prejudice and is refiled, the parties shall, after allotment, have been transferred to that division from which it was dismissed. Whenever any Judge discovers the allotment to her division of a case so dismissed from another division, the

Judge shall immediately transfer the case to the division from which it was dismissed.

1103- Disqualification of Judge.

If a judge is disqualified pursuant to KRS 26A.015, the case shall be randomly reallotted to another member of the Jefferson Circuit Bench. If all judges of the Jefferson Circuit Bench are disqualified, the Chief Regional Judge shall certify the need to assign a special judge.

Under the Kentucky Supreme Court Code of procedures rules the word "shall" means must.

The Jefferson Circuit Court Rule 11 is simple, fair and clear.

1- When a case is filed, in Jefferson Circuit, the Court Clerk by an automated register assigns the case to a Division. No judge can give up a case and no judge gets to choose any case.

2- The Case remains with the division it's assigned forever, unless a Judge is disqualified by reasons outlined in Kentucky Statute 26A.015

3- If a Judge is disqualified for any reason the Court Clerk by the automated register assigns the case to another division.

4- If a case was dismissed without prejudice and is refiled, it has to be assigned by the Court Clerk by the automated register and then it is to be transferred to the original division.

5- The Kentucky Supreme Court designed these rule years ago, to make sure all persons filing lawsuit received a fair shake, to make sure the same judge would hear the complete case and the Supreme Court by Rule 11 made sure that cases were distributed evenly to all Judges. There are 13 Divisions in the Jefferson County Circuit and if every judge was allowed to move cases at will, it would create confusion to no end. These rules supplement the Kentucky Rules of Civil Procedure

6- Under Supreme Court Rule 11 there is no way a case can be transferred to another judge by judges for any reason.

7- Regardless of how a case is legally transferred it must be re-allotted by the automated register system.

8- There was no reason why the case in question should have been moved from division 7 to division 10 and under the Kentucky Supreme Court Rule 11 should not have been transferred.

9- Petitioner was denied due process of a fair trial of his case, a summary judgment decision that was found in Petitioner's favor once was changed, caused by the transferring of the case, by the three Respondents.

10- Chief Judge James Shake knew Rule 11 when he ordered Judge Audra Eckerle to re-allot the case to division 10 and he knew it was wrong to do so. As Chief Judge, he knows when cases are to be transferred and why, it his duty to see that Rule 11 is followed.

11- Judge Audra Eckerle knew Rule 11 and she knew she could not re-allot the case to another division regardless to what the Chief Judge orders.

12- Judge Ann O'Malley Shake knew Rule 11 and she knew not to accept the case from Judge Eckerle and should have notified the Court Administrator.

The three Respondents conspired to harm Petitioner and they succeed.

Petitioner does not know all of the facts; he was not allowed to take discovery before the trial court granted Summary judgment.

Arguments

A review of the Appeal Court's ruing entered on December 30, 2009 clearly shows that the court did not review or use the evidence materials that Petitioner has submitted with this petition.

It is also clear that the Appeal Court was protecting the Respondents because they are judges. The Appeals Court stated at the top of their order, "Not Recommended for full-text Publication"

The case in question should have never been moved out of Division seven (7). There was no reason by rule to transfer the case from Division 7 and Rule 11 prohibited it. Judge Eckerle made her decision regarding the summary judgment motion and she rejected the defendants, summary judgment motion.

The Kentucky Supreme Court rule 11 leaves no room regarding its meaning. It has a definite meaning and by the Supreme Court rules of procedures must be strictly inhered to. The rule was established to keep Judges in a large Court district from switching cases at will because the order entered on July 11, 2006 starts with these words, **"Upon recommendation of the Chief Judge of the Thirtieth Judicial Circuit and being otherwise sufficiently advised."**

Chief Judge James Shake had no juridical involvement of any type, at any time, in the case.

Judge James Shake knew that by ordering the case transferred he was violating Rule 11. Judge James Shake knew that ordering a Judge to give the case to another judge that wasn't assigned by Rule 11, was in violation of the Supreme Court Rules.

Judge Ann O'Malley Shake never at any time had any judicial involvement in the case and she knew she was violating Rule 11 if she asked for the case. She knew that accepting the case violated Rule 11.

Judge Audra Eckerle knew that it was her case and she knew she could not to give the case to another judge per rule 11. All cases must be reassigned by Rule 11. Judge Eckerle had no reason to give the case up, but if she had a reason, she knew how to disqualify herself. Regardless the case had to be randomly reallotted to another judge.

Judge James Shake was running for election as judge on the Kentucky Supreme Court and was soliciting donation for his election campaign.

Judge James Shake received and accepted a campaign donation from Defendants Counsel Mr. Dennis Stilger on May 19, 2008 and Judge James Shake's wife Judge Ann Shake sign the Defendant's Motion for Summary Judgment the next day May 20, 2008.

It is clear that besides breaking Kentucky Supreme Court rules Judge James Shake's and Judge Ann Shake's actions was in "clear absence of all jurisdictions."

Our county is exploding and in the process, falling apart, because of so many differents. Petitioner is 80 years old and after being Pro, Se in a couple of other law cases he is convinced that the justice system is leading the way to the unrest in America.

The fourteenth amendment gave due process to justice and the court system has taken this right away.

The Courts protects judges by the court's new made law. A judge is protected by absolute immunity for any reason. I will quote from Stump v. Sparkman 435 U.S 349, 356, 57 (1978) **"a judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority: rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction."**

If Stump V, Sparkman is the standard then the Rules of The Supreme Court of Kentucky Code of Judicial Conduct SCR 4.300 which contain Cannon 1-2-3-4-5, (the judiciary commandments) has no meaning, let alone Due Process. Absolute Immunity is in clear conflict with both state's Supreme Court Codes and Rules and Due Process

Every court in America in both Federal and State Courts is now quoting and using the Stump V. Sparkman case to protect judges for any and all reasons. There-by the courts have taken away the due process from the people and the integrity that assured citizens a fair and honest trial. Some judge in America has become dictators because they know they are protected by the law. Any

person that gets elected as a judge, could dictate the future of every citizen who comes before them.

The court system gets all types of judges, smart ones, ones dumb, sincere ones, mean ones, honest ones, dishonest ones, etc,it doesn't matter if every judge get immunity.

Judges have become God to dishonest attorneys. A Judge needs campaign financing to run for office and they have made slaves out of attorneys who must make a living. A judge with absolute immunity can control most attorneys, especially bad attorneys.

This honorable body should look at the harm done by granting absolute immunity to judges is doing to our county and the repercussions it has on the justice system.

Example, in a case that was filed to be tried by a jury the judge should not become involved except to shepherd the case to a trial. They should not use their position to see the case never gets to trial, such as granting summary judgment when there is no reason to. Some Judges don't care about the damage they cause, because they know that they are protected by absolute immunity. Eliminating absolute immunity would make honest judges out of dishonest judges.

Attorney are afraid to defend them self against the abuse they are receiving from judges, because the will lose their lively hood if they complain.

The ruling made in Stump V. Sparkman may have been a good ruling based on what happen at the time.

The Courts have cited that case many times and it keeps getting extended in meaning every time it is cited. Judges today use it for everything a mind can think up.

This body owes it to America and to the future of our country to clarify the Due Process and immunity for judges' issues. This body has a chance to help put this country back to the way our founding fathers wanted it to be. Fair and equal treatment for all.

An honest and fair judge doesn't need immunity and this country existed for over 200 years before the Stump V. Sparkman ruling in 1978.

America is under attack from many sides. This Petitioner believes that America cannot survive the way we all want it to be, without a true and honest Due Process system, which must come first.

If this court believes in the jury system, then why is the system not good enough for judges? Why do judges need to be protected? Americans don't believe any one should be granted absolute immunity. If they did, it would have been put it in the constitution

What makes Judges different that the rest of the citizens of America? Are they better people? Are they indispensable? Why do they receive immunity?

This issue and the results that will come from it, is not a political issue, but an issue that will determine the future of our families, our children's, and neighbor's.

As Jesus said, we will be judged, on the thoughts that were in our mind and the deeds we did, not on the words we say.

REASONS FOR GRANTING THE WRIT

1- The Respondents violated The Kentucky Supreme Court's Rules of Practice and Procedure of the Thirtieth Judicial Circuit, Jefferson Circuit Court and absolute immunity should never have been granted.

2- This court should not allow judges violating Court's rules and laws turn out to be the norm in America.

3- This court should review this case because the Court of Appeals had no intention of ruling against judges. The wording of their order states no evidence was presented and that is not so, as the files will show.

4- Covering up for offenses done by judges is the worse thing any court can do, if justice is to prevail in America.

5- This Court should review the Appeal Court's ruling order and plus all evidence materials previous submitted to the Trial Court and Appeal Court in this case. The Court of Appeals order shows they did not review all of the evidence and Petitioner is entitled to a full review of all evidence.

CONCLUSION

The Respondent judges violated the Kentucky Supreme Court Rules that injured Petitioner and did not deserve Absolute Immunity.

Judges cannot have jurisdiction in a case they obtained illegally.

This case should be returned to the trial court with instructions to hold a trial and let a jury judge the actions of the Respondents, based on the evidence. Cannon 1 states and I quote, "**An independent and**

honorable judiciary is indispensable to justice in our society" and further it states, **"and (judges) shall personally observe these standards so that the integrity and independence of the judiciary will be preserved"**
Cannon 2 states, **"A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"**

The Cannons are the commandments of the judiciary system and to give judge's immunity, goes against the writers of Cannons and kicks them in the teeth.

The future of America depends on this court to define a set of rules, based on the Constitution, to assure that every citizen receives the same Due Process and also, so state's Supreme Courts can write A Code of Judicial Conduct, to match this court's rules.

America is crying out for justice for all.

This Petition is not the best worded, but it's the best a 80 year old man who is not trained in law and who does his own typing with one finger can do and he prays it is worded good enough to put his point across to this honorable body

Respectfully submitted,

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